

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 7-81:

DENTON FEDERATION OF TEACHERS, )  
MFT, AFT, AFL-CIO, )

Complainant, )

- vs - )

DENTON SCHOOL DISTRICT NO. 84, )  
and OFFICIALS OF DENTON SCHOOL )  
DISTRICT NO. 84, )

Defendant. )

ORDER  
DISMISSING PETITION  
AND  
DENYING OBJECTIONS TO  
ELECTION

\* \* \* \* \*

The "Petition"

On January 31, 1981, the above-captioned Montana Federation of Teachers filed a series of unfair labor practice charges on a form provided by this office. The charges were directed against School District No. 84 and the officials of School District No. 84, Denton, Montana. On the form provided by this office, there is a place which states as follows:

"7. DETAILS OF THE CHARGE: (A clear and concise statement of facts constituting the alleged violations should be made, including the time and place of occurrence of particular acts, AND A SPECIFIC STATEMENT OF THE PORTION OF PORTIONS OF THE LAW OR RULES ALLEGED TO HAVE BEEN VIOLATED.) Attach additional sheets if necessary."

Despite the clear language on the form indicating facts were necessary to support allegations, the charging party made only general allegations of the law, but cited absolutely no facts.

The language on the form is in conformity with Rule 24.26. 580(3), ARM, which provides as follows concerning an unfair labor practice complaint:

- (3) A complaint shall contain the following:
- (a) the name, address and telephone number of the complainant;
  - (b) the name, address and telephone number of the party against whom the charge is made; and
  - (c) a clear and concise statement of facts constituting the alleged violation, including the time and

1 place of occurrence of the particular acts and a statement  
2 of the portion or portions of the law or rules alleged to  
have been violated.

3 On February 5, 1981, the Board of Personnel Appeals served  
4 a Summons and copy of the complaint on the Denton School  
5 District officials.

6 On February 13, 1981, the School District filed an Answer  
7 to Complainant's charge, and Motion to Dismiss. The answer  
8 denied the general allegations and stated affirmatively that the  
9 School District had bargained in good faith with the charging  
10 party and in fact had entered into and was signatory to a  
11 collective bargaining agreement with the charging party.

12 On February 24, 1981, the undersigned dismissed the unfair  
13 labor practice charges, ULP No. 7-81. The basis for the  
14 dismissal was that no "clear and concise statement of facts  
15 constituting the alleged violation, including the time and place  
16 of occurrence of the particular acts" as required by the unfair  
17 labor practice form and our rules (Rule 24.26.580(3)(c), ARM).

18 The dismissal was pursuant to Rule 24.26.580(4), ARM, which  
19 provides that,

20 (4) If the board determines that the facts alleged  
21 in the complaint do not constitute an unfair labor  
22 practice under section 39-31-402 and 39-31-402, MCA, it  
shall dismiss the charge.

23 On March 24, 1981, Montana Federation of Teachers filed a  
24 Petition with the Board of Personnel Appeals objecting to the  
25 dismissal of the ULP No. 7-81. The "Petition", if it purports  
26 to be exceptions to the Order of Dismissal and directed to the  
27 Board, is untimely.

28 Rule 24.26.584, ARM, provides that:

29 24.26.584 EXCEPTIONS (1) If a majority of the  
30 board have not heard the case, the person who conducted  
the hearing shall serve a proposed decision and order  
31 upon the parties who shall have 20 days to file  
exceptions and present briefs and oral arguments to  
32 the entire board. (Emphasis supplied.)

*The Petition is untimely if it purports to be "exceptions", and it is barred by res judicata if it purports to be a re-filing.*

1 Even allowing three (3) days for service by mail of the  
2 February 24, 1981, Order, the Petition is seven (7) days late.  
3 The Board cannot consider untimely filed exceptions to an order  
4 issued by its administrator.

5  
6 The "Objection to Notice of Election"

7 On January 2, 1981, the Denton Teachers' Association filed  
8 a Petition for Decertification with the Board of Personnel  
9 Appeals. Copies of this petition were then served on the Denton  
10 School Board and the Montana Federation of Teachers.

11 On March 13, 1981, the undersigned issued a Notice of  
12 Election directing a decertification election be held on  
13 April 1, 1981, to determine whether the Denton teachers wish  
14 to be represented by the Denton Teachers Association, Montana  
15 Federation of Teachers or no representation.

16 On March 24, 1981, the Montana Federation of Teachers  
17 filed an "Objection to Notice of Election".

18 The basis for Montana Federation of Teacher's objection to  
19 the election was stated as follows:

20 "(2) That the undersigned is informed and believes,  
21 and on such basis states that the Denton Teachers Associa-  
22 tion is not a collective bargaining association or employee  
23 organization or exclusive representative as those terms  
24 are defined by Section 39-31-103."

25 39-31-103(5) and (6) defines labor organization and  
26 exclusive representation as follows:

27 (5) "Labor organization" means any organization or  
28 association of any kind in which employees participate  
29 and which exists for the primary purpose of dealing with  
employers concerning grievances, labor disputes, wages,  
rates of pay, hours of employment, fringe benefits, or  
other conditions of employment.

30 (6) "Exclusive representative" means the labor  
31 organization which has been designated by the board as  
32 the exclusive representative of employees in an appro-  
priate unit or has been so recognized by the public  
employer.

- 3 -

*"Objection" untimely. 24.26.644  
says objection to Petition for Decert  
to be filed w/in 5 working days of  
Petition.*

1 The Denton Teachers Association meets the statutory defini-  
2 tion of a labor organization. The Denton Teachers Association  
3 will become the exclusive representative only if: it wins the  
4 election and it amends its by-laws to conform to 39-31-206, MCA.

5 This Board has the statutory discretion to determine when  
6 a decertification election can be held. State of Montana, ex  
7 rel. BPA vs. Eleventh Judicial District et al. 598 P2d 117, 103  
8 LRRM 2297 (1979). The allegations raised in the Montana  
9 Federation of Teachers' (1) complaint, ULP No. 7-81; (2) Petition  
10 and; (3) Objections to Election, do not contain any, (let alone  
11 sufficient) factual evidence to stay the election scheduled for  
12 April 1, 1981. Without sufficient factual evidence, there is  
13 nothing for the Board to investigate or conduct a hearing on.

14 Accordingly, the Montana Federation of Teachers' Objection  
15 to Election is denied. The election will proceed as scheduled.

16 DATED this 30 day of March, 1981.

17 BOARD OF PERSONNEL APPEALS

18  
19 By

Robert R. Jensen  
Robert R. Jensen  
Administrator

21  
22 NOTICE: Any party aggrieved by this Order shall have twenty (20)  
23 days to file Exceptions to the Board of Personnel Appeals.  
24  
25  
26  
27  
28  
29  
30  
31  
32

CERTIFICATE OF MAILING

I, Jennifer Jacobson do hereby certify and state that

I mailed a true and correct copy of the ORDER DISMISSING

PETITION AND DENYING OBJECTIONS TO ELECTION ON ULP #7-81 to

the following on the 30 day of March, 1981:

Duane Johnson  
Labor Relations Coordinator  
Montana School Boards Association  
501 North Sanders  
Helena, MT 59601

James McGarvey  
Executive Director  
Montana Federation of Teachers  
AFL-CIO  
P.O. Box 1246  
Helena, MT 59601

Bruce H. Peterson, President  
Denton Teachers Association  
Box 961  
Denton, MT 59430

RECEIVED

MAR 24 1981

STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 7-81:

DENTON FEDERATION OF TEACHERS, )  
MFT, AFT, AFL-CIO, )  
complainant, )  
-vs- ) PETITION  
DENTON SCHOOL DISTRICT NO. 84 ) ULP No. 7-81  
and OFFICIALS OF DENTON SCHOOL )  
DISTRICT NO. 84 )  
defendant. )

\* \* \* \* \*

PETITION

\* \* \* \* \*

Comes now the Denton Federation of Teachers, MFT, AFT, AFL-CIO by and through the Montana Federation of Teachers, AFT, AFL-CIO, its authorized agent, and states as follows:

- (1) On January 30, 1981, the complainant caused to be prepared an Unfair Labor Practice charge, No. 7-81. On February 12, 1981, the defendant filed a "Motion to Dismiss" and an "Answer to Complainant Charge". In both documents, the defendant alleged that the complainant had made no "statement of facts" and no "time and place of occurrence of particular acts." Defendant alleged that this "omission" was not in accordance with the Board Rules and by-laws.
- (2) On February 26, 1981, the Board of Personnel Appeals dismissed the Unfair Labor Practice as filed. Such dismissal was not in accordance with the rules of this Board, not in accordance with statutes effecting public employee right to collective bargaining (Title 39, Chapter 31, MCA).
- (3) The determination of the Board of Personnel Appeals, in acting on the Motion to Dismiss, was improper in that it denied the complainant an opportunity to submit additional information and evidence as to the matters alleged in the initial filing of Unfair Labor Practice #7-81. The provisions of the Administrative Procedures Act which govern the proceedings of this Board, require that complainant be afforded a full opportunity in investigative proceedings (before a designated hearing examiner) to submit evidence in support of the matters alleged

in the original Unfair Labor Practice charge. At the very least, and in the alternative, the order of the Board of Personnel Appeals ought to have required submission of additional materials to support the allegations of the Unfair Labor Practice. Dismissal of the Unfair Labor Practice, on the sole basis of the Motion to Dismiss - without more, fails to adequately provide a full determination of the issues raised, and, therefore, deprives complainant of due process under both the Administrative Procedures Act and the Public Employee Collective Bargaining Act, as well as under the rules of this Board.

WHEREAS COMPLAINANT PRAYS as follows:

- (1) That the Board rescind its order dismissing ULP #7-81; and,
- (2) That the Board reinstate ULP #7-81 and order a hearing (or such other proceedings as are necessary) in order to legally determine the allegations raised in such Unfair Labor Practice; and, that the Board hold in abeyance its order setting election (dated March 13, 1981) until final determination of any and all issues which effectively and legally block such election are finally determined by this Board in accordance with law.

DATED this 24<sup>th</sup> day of March, 1981.

Montana Federation of Teachers, AFT, AFL-CIO

By:

James M. Harvey  
For and on behalf of the Montana Federation  
of Teachers, AFT, AFL-CIO

STATE OF MONTANA

County of Lewis & Clark

James M. Harvey, BEING DULY SWORN DEPOSES AND SAYS, That he/she is the charging party above named, or its representative, that he/she has read the above petition (including attached additional page/s) and is familiar with the contents thereof, and the same are true to the best of his/her knowledge.

James M. Harvey  
SIGNATURE OF COMPLAINANT

(Notarial Seal)

Executive Director  
TITLE

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 24<sup>th</sup> DAY OF March, 1981

Maye M. Parrish  
NOTARY PUBLIC FOR THE STATE OF MONTANA.  
RESIDING IN Helena, MONTANA.

My commission expires March 23, 1983.

CERTIFICATE OF MAILING

I, Eileen C. Egeland, do hereby certify and state that a true and exact original and five copies of the foregoing 'Petition' was mailed, postage prepaid to:

Mr. Robert Jensen  
Administrator  
Board of Personnel Appeals  
35 So. Last Chance Gulch  
Helena, MT 59601

and a true and exact copy of the foregoing 'Petition' was mailed, postage prepaid to:

Duane Johnson  
501 North Sanders  
Helena, MT 59601



STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 7-81:

DENTON FEDERATION OF TEACHERS, )  
MFT, AFT, AFL-CIO, )

Complainant, )

- vs - )

ORDER

DENTON SCHOOL DISTRICT NO. 84, )  
and OFFICIALS OF DENTON SCHOOL )  
DISTRICT NO. 84, )

Defendant. )

\*\*\*\*\*

The Board of Personnel Appeals, having considered the Defendant's  
Motion dated February 12, 1981, and good cause appearing therefor;

ORDERS that Unfair Labor Practice No. 7-81 be dismissed.

DATED this 24 day of February, 1981.

BOARD OF PERSONNEL APPEALS

By Robert R. Jensen  
Robert R. Jensen  
Administrator

\*\*\*\*\*

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state that I  
mailed a true and correct copy of the above ORDER to the following  
persons on the 26 day of February, 1981:

Duane Johnson  
Labor Relations Coordinator  
Montana School Boards Association  
601 North Sanders  
Helena, MT 59601

Jill McGarvey  
Executive Director  
Montana Federation of Teachers  
AFL-CIO  
211 1/2 S. 3246  
Helena, MT 59601

Jennifer Jacobson

STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 7-81:

1 DENTON FEDERATION OF TEACHERS, )  
2 MFT, AFT, AFL-CIO, )  
3 complainant, )  
4 -vs- ) MOTION TO DISMISS  
5 DENTON SCHOOL DISTRICT NO. 84 ) ULP No. 7-81  
6 and OFFICIALS OF DENTON SCHOOL )  
7 DISTRICT NO. 84 )  
8 defendant. )

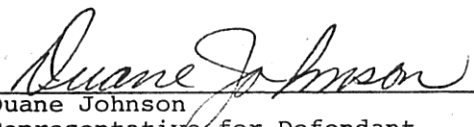
9 \* \* \* \* \*

10 MOTION TO DISMISS

11 \* \* \* \* \*

12 Defendant is unable to answer the allegations contained in  
13 ULP 7-81. Complainant has made no "statement of facts" and has  
14 not included "the time and place of occurrence of particular acts"  
15 as required by Board Rules and by law.

16 DATED this 12<sup>th</sup> day of February, 1981.

17  
18   
19 Duane Johnson  
20 Representative for Defendant  
21 501 North Sanders  
22 Helena, MT 59601

23 \* \* \* \* \*

24 CERTIFICATE OF MAILING

25 I, Leni L. Crebo, do hereby certify and state that a true and  
26 exact original and five copies of the foregoing 'Motion to Dismiss'  
27 was mailed, postage prepaid to:

28 Mr. Robert Jensen  
29 Administrator  
30 Board of Personnel Appeals  
31 35 So. Last Change Gulch  
32 Helena, MT 59601

and a true and exact copy of the foregoing 'Motion to Dismiss' was  
mailed, postage prepaid to:

Eileen C. Egeland  
Office Manager  
Montana Federation of Teachers  
AFT, AFL-CIO  
Box 1246  
Helena, MT 59601

on the 12th day of February, 1981.

Lene L. Crabo

STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 7-81:

1 DENTON FEDERATION OF TEACHERS, )  
2 MFT, AFT, AFL-CIO, )  
3 complainant, ) ANSWER TO  
4 -vs- ) COMPLAINTS CHARGE  
5 DENTON SCHOOL DISTRICT NO. 84 )  
6 and OFFICIALS OF DENTON SCHOOL )  
7 DISTRICT NO. 84, )  
8 defendant. )

9 Comes now DENTON SCHOOL DISTRICT NO. 84 defendant, and  
10 answers complainant's charge as follows:

11 I.

12 (1) Defendant denies violation of 39-31-401 M.C.A. (Section  
13 1.). Defendant denies restraint or coercion of employee rights  
14 guaranteed in Section 39-31-201, M.C.A.  
15

16 (2) Defendant denies interference with the formation of  
17 complainant labor organization.  
18

19 (3) Defendant denies discrimination in regard to hire and  
20 tenure of employment and terms and conditions of employment for  
21 the purpose of determining membership in complainant labor organ-  
22 ization.

23 (4) Defendant denies that it refused to bargain collectively  
24 in good faith with the exclusive representative of its employees.  
25

26 FIRST AFFIRMATIVE DEFENSE

27 Complainant's charge makes no statement of facts nor does  
28 the charge give times and dates of alleged violations. Therefore,  
29 the charge cannot be properly placed before the Board of Personnel  
30 Appeals and should be dismissed. (See enclosed MOTION TO DISMISS)  
31  
32

1                                    SECOND AFFIRMATIVE DEFENSE

2            The Defendant has at all times, bargained in good faith  
3 with the Complainant and has entered into and is signatory to  
4 a labor agreement with Complainant as a result of negotiations.  
5

6                                    VERIFICATION

7            Duane Johnson, being first duly sworn, deposes  
8 and says:

9            That he resides at Helena, Montana; that he is one of the  
10 representatives for the DENTON SCHOOL DISTRICT NO. 84; that he  
11 has read the foregoing answer, knows the contents thereof; and  
12 that the same is true of his own knowledge, information and belief.  
13

14                                    Duane Johnson  
15

16 DATED, this 12<sup>th</sup> day of February, 1981.  
17

18                                    Duane Johnson  
19  
20

21 STATE OF MONTANA                    )  
22                                    :    SS  
23 County of Lewis and Clark        )

24            On this 12<sup>th</sup> day of February, 1981, before me, the  
25 undersigned, a Notary Public for the State of Montana, personally  
26 appeared Duane Johnson, known to me to be one of the  
27 representatives for the DENTON SCHOOL DISTRICT NO. 84.

28            IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
29 my Notarial Seal the day and year in this certificate first above  
30 written.  
31

32 (Seal)

Leni L. Hamilton Crebo  
NOTARY PUBLIC for State of Montana  
Residing at Helena, Montana  
My Commission expires 9-15-82

CERTIFICATE OF MAILING

I, Leni L. Crebo, do hereby certify and state that a true and exact original and five copies of the foregoing "Answer to Complainant's Charge" was mailed, postage prepaid to:

Mr. Robert Jensen  
Administrator  
Board of Personnel Appeals  
35 So. Last Chance Gulch  
Helena, MT 59601

and a true and exact copy of the foregoing "Answer to Complainant's Charge" was mailed, postage prepaid to:

Eileen C. Egeland  
Office Manager  
Montana Federation of Teachers  
AFT, AFL-CIO  
Box 1246  
Helena, MT 59601

on the 12th day of February, 1981.

Leni L. Crebo

JAN 30 1981



STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY PERSONNEL APPEALS  
BOARD OF PERSONNEL APPEALS

FOR BOARD USE ONLY

DATE FILED: 1/30/81

CASE NO.: ULP-7-81

UNFAIR LABOR PRACTICE CHARGE

INSTRUCTIONS: SUBMIT AN ORIGINAL AND 5 COPIES OF THIS CHARGE TO: THE BOARD OF PERSONNEL APPEALS, 35 SOUTH LAST CHANCE GULCH, HELENA, MONTANA 59601. IF MORE SPACE IS REQUIRED FOR ANY ITEM, ATTACH ADDITIONAL SHEETS AND NUMBER ITEMS ACCORDINGLY. PRINT OR TYPE IN BLACK.

1. NAME OF CHARGING PARTY (COMPLAINANT):

Denton Federation of Teachers, MFT, AFT, AFL-CIO

2. AFFILIATION (if any);

Montana Federation of Teachers, AFT, AFL-CIO

3. ADDRESS OF COMPLAINANT (Number & Street, City & Zip):

Box 1246 Helena, MT 59601

4. NAME OF PARTY AGAINST WHOM THE CHARGE IS MADE (DEFENDANT):

School District #84 and the officials of School District No. 84

5. AFFILIATION (if any):

6. ADDRESS OF DEFENDANT (Number & Street, City & Zip):

Denton, MT 59430

TELEPHONE:

567-2270

7. DETAILS OF THE CHARGE: (A clear and concise statement of facts constituting the alleged violations should be made, including the time and place of occurrence of particular acts, AND A SPECIFIC STATEMENT OF THE PORTION OR PORTIONS OF THE LAW OR RULES ALLEGED TO HAVE BEEN VIOLATED.) Attach additional sheets if necessary.

- (1) The Employer is guilty of an Unfair Labor Practice in that he violated 39-31-401 MCA (Section 1). He did interfere with, restrain, and coerce in the exercise of the rights guaranteed in Section 39-31-201 MCA.
- (2) The Employer did interfere with the formation of the complainant labor organization.
- (3) The Employer did discriminate in regard to hire and tenure of employment and terms and conditions of employment for the purpose of determining membership in complainant labor organization.
- (4) The Employer did refuse to bargain collectively in good faith with the exclusive representative of its employees.

8. If the charge alleges a violation of Section 39-31-401(5) MCA, or Section 39-31-402(2) MCA, has the charging party requested the BOARD OF PERSONNEL APPEALS to provide mediation assistance, pursuant to ARM 24.26.695 of the BOARD'S rules? Yes X No     

STATE OF MONTANA

County of Lewis & Clark

Ernest C. England, BEING DULY SWORN DEPOSES AND SAYS, That he/she is the charging party above named, or its representative, that he/she has read the above charge (including attached additional page/s) and is familiar with the contents thereof, and the same are true to the best of his/her knowledge.

Ernest C. England  
SIGNATURE OF COMPLAINANT

Office Manager  
TITLE

(Notarial Seal)

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 30 DAY OF Jan, 1981

Judy Armstrong  
NOTARY PUBLIC FOR THE STATE OF MONTANA.  
RESIDING IN Helena, Montana  
My Commission Expires May 30, 1983